

1 **BEFORE THE ARIZONA MEDICAL BOARD**

2
3 In the Matter of

4 **DAVID A. WILBIRT, M.D.**

5 Holder of License No. 9920
6 For the Practice of Allopathic Medicine
7 In the State of Arizona.

**Case No: MD-03-0749, MD-05-0173
MD-05-0798, MD-05-0888**

**INTERIM FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
FOR SUMMARY SUSPENSION OF
LICENSE**

8 **INTRODUCTION**

9 The above-captioned matter came on for discussion before the Arizona Medical
10 Board on August 30, 2005. After reviewing relevant information and deliberating, the
11 Board considered proceedings for a summary action against the license of David A.
12 Wilbert, M.D. ("Respondent"). Having considered the information in the matter and being
13 fully advised, the Board enters the following Interim Findings of Fact, Conclusions of Law
14 and Order for Summary Suspension of License, pending formal hearing or other Board
15 action. A.R.S. § 32-1451(D).

16 **INTERIM FINDINGS OF FACT**

17 1. The Board is the duly constituted authority for licensing and regulating the
18 practice of allopathic medicine in the State of Arizona.

19 2. Respondent is the holder of License No. 9920 for the practice of allopathic
20 medicine in the State of Arizona.

21 **Case Number MD-03-0749**

22 3. The Board initiated case number MD-03-0749 on August 4, 2003 after a
23 pharmacist reported that Respondent was prescribing excessive amounts of Norco and
24 OxyContin to patient RC. RC received 110 OxyContin 40mg tablets from three
25 prescriptions filled between July 8, 2003 and July 29, 2003. RC also received 240 Norco

1 10 mg tablets from four prescriptions filled between July 20, 2003 and July 31, 2003. In
2 his response to the allegations, Respondent reported he was alerted to the potential
3 danger of Acetaminophen toxicity by a pharmacy technician. Respondent also indicated
4 he questioned the veracity of the numerous prescriptions presented by RC.

5 4. Further investigation revealed Respondent had also prescribed excessive
6 amounts of Norco and Effexor to patient MK. MK received 150 Norco 10 mg tablets from
7 two prescriptions filled between July 17, 2003 and July 25, 2003 and 150 Effexor tablets
8 filled between July 17, 2003 and July 18, 2003. MK also received 1250 Norco 10 mg
9 tablets filled at five different pharmacies between October 26, 2003 and January 6, 2004.

10 **Case Number MD-05-0173**

11 5. The Board initiated case number MD-05-0173 on March 19, 2005 after
12 receiving an anonymous complaint alleging Respondent was prescribing medication for
13 non-therapeutic purposes. Respondent prescribed Arimidex, Oxandrolone, Descanoate,
14 Stanozolol, Cypionate, Novarel, Dyazide, Triamterene, Tamoxifen, Winstrol, Nondrolone,
15 and Cytomel. These prescriptions were filled by an out-of-state pharmacy for use by a
16 bodybuilder. Respondent has prescribed many of these drugs to clientele of a company
17 called Bodybuilders.

18 **Case Number MD-05-0798**

19 6. The Board initiated case number MD-05-0798 on August 8, 2005 after
20 receiving a newspaper article describing a federal Drug Enforcement Administration
21 ("DEA") investigation of Respondent. The article stated that Respondent had written
22 thousands of illegal prescriptions over the past four years for steroids and human growth
23 hormones for body builders and that the DEA confiscated three plastic bags of marijuana
24 from Respondent's home.

MD-05-0888

7. On April 13, 2005 Respondent entered into an Interim Consent Agreement for a Non-Disciplinary Practice Limitation ("Consent Agreement") after he suffered a stroke on February 16, 2005 and experienced subsequent cognitive impairment. The Consent Agreement prohibited Respondent from engaging in the practice of clinical medicine, including a prohibition on prescribing treatment or medications.

8. The Board initiated case number MD-05-0888 on August 25, 2005 after a pharmacist reported Respondent had telephoned him on August 22, 2005 with a prescription for Xanax for patient BP. The pharmacist noted suspicions about BP and concern about drug-seeking behavior.

9. On August 25, 2005 Board Staff issued a subpoena ordering Respondent to appear for an investigative interview concerning case numbers MD-03-0749, MD-05-0173, MD-05-0798 and MD-05-0888. In an August 26, 2005 letter from his counsel Respondent declined to appear for the investigative interview.

10. Respondent's disregard of the voluntary Consent Agreement indicates he is unwilling to be subject to the Board's regulatory powers.

INTERIM CONCLUSIONS OF LAW

1. The Board possesses jurisdiction over the subject matter hereof and over Respondent, holder of License No. 9920 for the practice of allopathic medicine in the State of Arizona.

2. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(27)(a) ("[v]iolating any federal or state laws, rules or regulations applicable to the practice of medicine;") A.R.S. § 32-1401(27)(j) ("[p]rescribing, dispensing or administering any controlled substance or prescription-only drug for other than accepted therapeutic purposes;") A.R.S. § 32-1401(27)(r) ("[v]iolating a formal order,

1 probation, consent agreement or stipulation issued or entered into by the board or its
2 executive director under this chapter;") A.R.S. § 32-1401(27)(q) ("[a]ny conduct or practice
3 that is or might be harmful or dangerous to the health of the patient or the public;") A.R.S.
4 § 32-1401(27)(hh)("[p]rescribing, dispensing or administering anabolic-androgenic steroids
5 to a person for other than therapeutic purposes;") A.R.S. § 32-1401(27)(ss) ("[p]rescribing,
6 dispensing or furnishing a prescription medication or prescription-only device as defined in
7 section 32-1901 to person unless the licensee first conducts a physical examination of that
8 person or has previously established a doctor-patient relationship. . . ."

9 3. Based on the foregoing Interim Findings of Fact and Conclusions of Law, the
10 public health, safety or welfare imperatively requires emergency action. A.R.S. § 32-
11 1451(D).

12 **ORDER**

13 Based on the foregoing Interim Findings of Fact and Conclusions of Law, set forth
14 above, IT IS HEREBY ORDERED THAT:

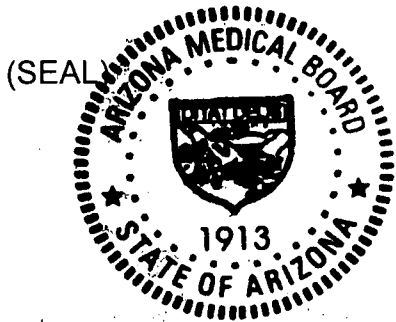
15 1. Respondent's license to practice allopathic medicine in the State of Arizona,
16 License No. 9920, is summarily suspended pending a formal hearing before an
17 Administrative Law Judge from the Office of Administrative Hearings.

18 2. The Interim Findings of Fact and Conclusions of Law constitute written notice
19 to Respondent of the charges of unprofessional conduct made by the Board against him.
20 Respondent is entitled to a formal hearing to defend these charges as expeditiously as
21 possible after the issuance of this order.

22 3. The Board's Executive Director is instructed to refer this matter to the Office
23 of Administrative Hearings for scheduling of an administrative hearing to be commenced
24 as expeditiously as possible from the date of the issuance of this order, unless stipulated
25 and agreed otherwise by Respondent.

1 DATED this 1st ^{September} ~~August~~ day of 2005.

2 ARIZONA MEDICAL BOARD



4 By: 
5
6 TIMOTHY C. MILLER, J.D.
7 Executive Director

8 ORIGINAL of the foregoing filed this
9 2nd day of ~~August~~ ^{September} 2005 with:

10 The Arizona Medical Board
11 9545 E. Doubletree Ranch Road
12 Scottsdale, AZ 85258

13 Executed copy of the foregoing mailed
14 by US Certified Mail this 2nd day
15 of ~~August~~ ^{September} 2005 to:

16 David G. Derickson, P.C.
17 3636 North Central – Suite 1050
18 Phoenix, Arizona 85012-1941

19 Executed copy of the foregoing mailed
20 by US Mail this 2nd day
21 of ~~August~~ ^{September} 2005 to:

22 David A. Wilbirt, M.D.
23 Address of Record

24 Dean Brekke
25 Assistant Attorney General
Arizona Attorney General's Office
1275 West Washington, CIV/LES
Phoenix, AZ 85007

